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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

ADRIAN V.,

Plaintiff and Appellant,

v.

STEPHANIE C. et al.,

Defendants and Respondents.

B243624

(Los Angeles County
Super. Ct. No. EF002551)

APPEAL from orders of the Superior Court of Los Angeles County,
R. Carlton Seaver, Judge. Affirmed.

Law Offices of Clemente Franco and Clemente Franco for Plaintiff and Appellant.

Mansouri Law Offices, Pedram Mansouri and Susan Abrams for Defendants and
Respondents.

Plaintiff and appellant Adrian V. appeals from orders in favor of defendants and respondents Stephanie C. and Andy H., rendered February 22, 2012: (1) denying his motion for DNA testing under Family Code section 7551¹ and to set aside Andy H.’s Voluntary Declaration of Paternity of N. C. (“N.”) under section 7575; (2) dismissing his section 7630 petition to establish paternity; and (3) and adjudging Andy H. the father of N.² He contends the order denying his motion for DNA testing as untimely was an abuse of discretion. We affirm.

STATEMENT OF FACTS AND PROCEDURE

1. Pleadings on petition to establish parental relationship.

a. Petition.

On January 26, 2011, Adrian filed a petition to establish a parental relationship with N., who was born in May 2007 to Stephanie. Contending he was N.’s father, he sought custody, visitation, and support orders. Stephanie and Andy were named as respondents.³

b. Opposition.

Stephanie opposed the petition, contending Adrian was not the father. She requested an order declaring that Andy was N.’s father. She submitted N.’s birth certificate, which stated Andy was the father

¹ All further statutory references are to the Family Code, unless otherwise indicated.

² The court directed respondents to prepare an order after hearing and judgment of paternity. The notice of appeal was filed before the written order and judgment was filed. (See Cal. Rules of Court, rule 8.104(a).) Accordingly, the notice of appeal is premature. (Cal. Rules of Court, rules 8.104(a), 8.104(c)(2), 8.104(d)(1).) Pursuant to California Rules of Court, rule 8.104(d)(1), we treat the notice of appeal as timely filed immediately after the signing of the order and judgment. (Cal. Rules of Court, rule 8.104(d)(1) [“A notice of appeal filed after judgment is rendered but before it is entered is valid and is treated as filed immediately after entry of judgment.”].)

³ Originally, Stephanie was the sole respondent. Andy was ordered joined as a respondent on September 16, 2011.

2. Pleadings on motion for DNA testing and to vacate voluntary declaration of paternity.

a. Motion for DNA testing and to vacate voluntary declaration of paternity.

After the court ordered Stephanie to provide Adrian with a certified copy of Andy's Voluntary Declaration of Paternity, Adrian filed a motion for DNA Testing and to Vacate Voluntary Declaration of Paternity on September 16, 2011. Adrian submitted declarations of Adrian and his mother, Tania.

Adrian and Stephanie had sexual relations from November 2005 until late 2006, when they stopped seeing each other. He was not aware Stephanie was pregnant or had a baby until June 2008, when she called him and told him she had a child and he was the father. Stephanie showed him the results of DNA testing that indicated N. was not Andy's daughter. Adrian believed her, accepted N. as his daughter, and resumed his relationship with Stephanie. He and Stephanie introduced N. to Adrian's family as Adrian's daughter. Stephanie, Adrian, and N. spent time together as a family. Tania frequently provided care for N. in her home. Adrian went there and saw N. After the relationship ended again, in September 2011, Adrian continued to see N. in Tania's home. Adrian gave Stephanie \$50 per week in child support. Adrian attached copies of seventeen money orders to Stephanie. N. began to call Adrian, "daddy." Adrian never abused Stephanie or used drugs.

When Stephanie told Adrian about the baby, she did not reveal to him that N.'s birth certificate and a Declaration of Paternity stated Andy was the father. Adrian did not learn about the birth certificate or the Declaration of Paternity until after filing this lawsuit. Adrian had never heard of a declaration of paternity. Had he known another man claimed to be N.'s father, he would have filed this action sooner. "Since [the day Stephanie told him he had a daughter] I have told the world she was my daughter, I treated [her] as such and took her into my home as my daughter."

Adrian caused a DNA test to be performed using saliva samples from N. and Adrian. He attached the test report, which indicated he was the father. The laboratory

stated it could not verify the origin of the samples, because they were not collected under a chain of custody by a neutral third party.

b. *Opposition.*

Stephanie and Andy opposed the requested relief. They submitted declarations by Stephanie and Andy and Andy's Declaration of Paternity.

Adrian and Stephanie dated periodically. He physically abused her, had a long history of abusing drugs, and had an extensive criminal record. She was having a sexual relationship with both Adrian and Andy during the time when she became pregnant. She told Adrian she was pregnant and did not know if he or Andy was the father. Adrian refused to take a paternity test.

Andy accompanied Stephanie to all her prenatal medical visits, was at the hospital for N.'s birth, signed the birth certificate, brought N. home with Stephanie, and signed the Declaration of Paternity. Since N.'s birth, Andy "carried himself as [N.'s] biological father in every respect, and he has supported her in every way." He saw N. every day.

When N. was four months old, Stephanie told Adrian that N. had been born and Andy was listed as the father on the birth certificate and Declaration of Paternity. Adrian again refused to take a paternity test.

Neither Stephanie nor Andy believed Adrian was N.'s biological father, but they were not certain. Andy decided to take responsibility for the child, whether or not the child was his. He loved N., and it did not matter to him if he was in fact her biological father. He was financially, physically, and emotionally involved with N. since the moment he learned Stephanie was pregnant.

In June or July 2008, Adrian met N. and resumed his relationship with Stephanie. Adrian and his family spent time with N., although they did not refer to N. as Adrian's daughter. Adrian was physically and verbally violent with Stephanie in N.'s presence. Stephanie broke up with Adrian in September 2008.

Stephanie stated, "I honestly do not know who [N.'s] biological father is. I suspect that it is Andy, because [N.] resembles him more than she resembles Adrian. Nevertheless, I do not believe it is in her best interests to determine who her biological

father is. [Because she] is . . . closely attached to Andy and his family . . . [and Adrian] is a complete stranger to her.” N. referred to Andy as “daddy.” Stephanie and Andy were currently engaged to be married. Andy was actively involved in N.’s life and was the only father N. had ever known.

In the Declaration of Paternity, executed on May 3, 2007, Andy declared, “I am the biological father of the child” and Stephanie declared, “I certify that the man signing this form is the only possible father of this child.” The Declaration of Paternity was submitted to the Department of Child Support Services on August 9, 2011. N.’s birth certificate and a hospital registration form listed Andy as the father.

3. Trial court’s ruling.

At the hearing on February 22, 2012, Stephanie and Andy contended the motion for DNA testing was untimely. Adrian contended that, under the court’s equitable power pursuant to section 7575, subdivision (c)(4), the court should exercise discretion and grant the untimely motion. He contended mother’s and Andy’s statements on the Voluntary Declaration of Paternity that Andy is the only possible father and is the biological father constitute extrinsic fraud. Moreover, mother’s concealment of N.’s existence from Adrian for a year and failure to inform Adrian another man was listed on the birth certificate and had signed a declaration of paternity was extrinsic fraud and mistake. Adrian contended he did not know about the Voluntary Declaration of Paternity until after suit was filed, and Adrian did not know the child existed until the child was one year old.

The court ruled the motion for a DNA test and to vacate the Voluntary Declaration of Paternity were untimely under section 7575, subdivision (b)(3) [a motion for DNA testing for the purpose of seeking to vacate a voluntary declaration of paternity must be filed within two years of the child’s birth]. Accordingly, the court dismissed the petition to establish a parental relationship with prejudice and ordered judgment entered declaring Andy as N.’s father.

The court stated it was aware it had equitable power to grant the motion for a DNA test even though the motion was untimely filed. “The court is going to not exercise whatever authority it has, the equity powers it has, to do it here. [¶] The court is going to find . . . that [Adrian] has had a lot of time to do something about it, didn’t do it, and it is going to find that the provisions of 7575[, subdivision] (b)(3)(A) are applicable. So it is going to deny the request for DNA testing and [to] set aside the voluntary declaration of paternity.” The court stated, the intent of the two-year limitations statute is to “provide[] stability in relationships between parents and their children.” Adrian admitted he knew about N. when she was one year old, when there was time to seek to establish paternity, but he sat on his rights. “Four years after the birth of the child, almost four years, it is when he finally got around to doing something.” “[T]here may be an equitable argument, the court is not going to exercise the authority in this case. [¶] The court finds that your client has just taken too long to get about it.”

DISCUSSION

Denial of the motion as untimely was not an abuse of discretion.

Adrian contends the trial court abused its discretion in denying his motion for DNA testing and to vacate the Voluntary Declaration of Paternity as untimely. We conclude there was no abuse of discretion.

1. Standard of review.

“A trial court’s order granting or denying a request for genetic testing is generally reviewed for abuse of discretion.” (*County of Orange v. Superior Court* (2007) 155 Cal.App.4th 1253, 1257.) “ ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.)

2. Legal framework.

Section 7573 provides: “Except as provided in Sections 7575, 7576, 7577, and 7612, a completed voluntary declaration of paternity, as described in Section 7574,⁴ that has been filed with the Department of Child Support Services shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction. The voluntary declaration of paternity shall be recognized as a basis for the establishment of an order for child custody, visitation, or child support.”

Section 7575, subdivision (b)(1) provides: “. . . if the court finds that the conclusions of all of the experts based upon the results of the genetic tests performed pursuant to Chapter 2 (commencing with Section 7550) are that the man who signed the voluntary declaration is not the father of the child, the court may set aside the voluntary declaration of paternity unless the court determines that denial of the action to set aside the voluntary declaration of paternity is in the best interest of the child”

Section 7575, subdivision (b)(3)(A) provides: “The notice of motion for genetic tests under this section may be filed not later than two years from the date of the child’s birth by a local child support agency, the mother, the man who signed the voluntary declaration as the child’s father, or in an action to determine the existence or nonexistence of the father and child relationship pursuant to Section 7630”

Section 7575, subdivision (c)(4) provides: “Nothing in this section is intended to restrict a court from acting as a court of equity.”

“The voluntary declaration of paternity . . . is a means by which a man who is identified as the natural father by the unmarried natural mother may assert paternity. (Fam. Code, § 7571.) The Legislature enacted the statutes creating the declaration

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Section 7574, subdivision (b) provides that the form of a voluntary declaration of paternity must contain, among other statements: “(5) A statement by the mother . . . that the man who has signed the voluntary declaration of paternity is the only possible father [¶] (6) A statement by the father . . . that he is the biological father of the child”

process to further the state's interest in establishing paternity for all children and to provide a means of establishing paternity that avoided the need for a lengthy and expensive court process. (Fam. Code, § 7570.) Once signed and filed with the Department of Child Support Services, the [voluntary declaration of paternity] has the effect of a judgment and is a conclusive presumption of paternity. (Fam. Code, §§ 7573, 7611, 7612.)” (*In re William K.* (2008) 161 Cal.App.4th 1, 8.)

“A voluntary declaration of paternity filed with the Department of Child Support Services . . . has ‘the same force and effect as a judgment for paternity issued by a court of competent jurisdiction.’ [Citations.] But the voluntary declaration of paternity may be set aside if a court finds that genetic tests performed pursuant to the Uniform Act on Blood Tests to Determine Paternity (§ 7550 et seq.) show that the man who signed the voluntary declaration is not the father of the child. [Citations.]” (*J.R. v. D.P.* (2012) 212 Cal.App.4th 374, 382-383.)

“The court’s powers in equity are significant, but not limitless. In order to vacate a judgment after the statutorily imposed time limits, extrinsic fraud must be shown. ‘The type of fraud necessary to vacate a final judgment is extrinsic fraud, not fraud which is intrinsic to the trial of the case itself. [Citation.] Extrinsic fraud occurs when a party is deprived of the opportunity to present his claim or defense to the court; where he was kept ignorant or, other than from his own negligence, fraudulently prevented from fully participating in the proceeding. [Citation.] . . . The essence of extrinsic fraud is one party’s preventing the other from having his day in court.’ [Citation.]” (*County of Orange v. Superior Court, supra*, 155 Cal.App.4th at p. 1261 [interpreting section 7575, subd. (c)(4)] as requiring extrinsic fraud before an untimely request for genetic testing may be granted under the court’s equitable powers[.]

A party’s mistake concerning the law and the facts is not extrinsic fraud. (*In re Marriage of Stevenot* (1984) 154 Cal.App.3d 1051, 1068, 1070 [requirement of extrinsic fraud to set aside default judgment].)

A mother's identification, as the father on the birth certificate and voluntary declaration of paternity, of a man she knew was not the biological father, for the purpose of keeping the biological father out of the child's life, is intrinsic, not extrinsic fraud. (*In re William K.*, *supra*, 161 Cal.App.4th at pp. 5, 10.)

When the limitations period for granting relief from a judgment has expired, “ ‘there is a strong public policy in favor of the finality of judgments’ ” [Citations.] (*Rappleyea v. Campbell* (1994) 8 Cal.4th 975, 982.)

3. Analysis.

Adrian contends it was an abuse of discretion to deny him relief under section 7575, subdivision (c)(4) [court's equitable power] on the ground that too much time had passed, because Stephanie's misrepresentations kept him ignorant of N.'s birth and caused him to be unaware of the Voluntary Declaration of Paternity and, thus, he was unable to challenge declaration within the two-year limitations period.⁵ The court did not abuse its discretion.

It is undisputed Adrian knew about the child well within the limitations period, and, accordingly, he was not prevented by ignorance of her existence from timely attempting to establish his own paternity. Moreover, Adrian did not show extrinsic fraud: any knowing misrepresentation concerning paternity by Stephanie and Andy on the Voluntary Declaration of Paternity, or ignorance by Adrian concerning what a voluntary declaration of paternity is, did not prevent Adrian from timely asserting his parental interest. Without extrinsic fraud, the court had no power to order genetic testing after the limitations period had expired. (See § 7575, subs. (b)(3)(A), (c)(4).)

In any event, the decision not to order genetic testing or vacate the paternity judgment was well within the bounds of reason. The court heard and considered all of Adrian's equitable arguments and decided not to exercise its equitable power. N. was

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To the extent Adrian contends the court erroneously interpreted section 7575 as requiring strict adherence to the two-year statute of limitation, Adrian mischaracterizes the record, which reflects the court was aware section 7575, subdivision (c)(4) gave the court discretion, acting in equity, to grant an untimely request for genetic testing.

almost five years old at the time of the hearing. There was evidence Andy made a timely and firm commitment to play the parental role and consistently performed that role throughout her entire life. N. believed Andy was her father. Granting Adrian's motion would destabilize N.'s existing parent-child relationship. There was evidence Adrian knew about the pregnancy and birth but failed to take steps to assert his paternity. The Legislature has determined that finality in paternity determinations within a reasonable time promotes the child's best interests. (*In re William K.*, *supra*, 161 Cal.App.4th at p. 8.) The court's ruling was not an abuse of discretion.⁶

DISPOSITION

The orders are affirmed. Cost on appeal are awarded to respondents.

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KLEIN, P. J.

We concur:

CROSKEY, J.

ALDRICH, J.

⁶ To the extent Adrian contends the Voluntary Declaration of Paternity is void because it contains false statements that Andy was the father and the only possible father, Adrian cites no authority for the contention, and we disagree with it. Adrian does not contend genetic testing performed pursuant to section 7550 et seq. showed that another man is the biological father. (§ 7575, subd. (b)(1).) Aware of Adrian's contention, the trial court exercised discretion and determined the Voluntary Declaration of Paternity should not be vacated. (§ 7575, subd. (c)(4).) The determination was not beyond the bounds of reason.